

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 1:19CV202  
(Judge Kleeh)

MATRICULATED SERVICES, LLC.,

Defendant/ Third-Party Plaintiff,

v.

ADRIAN HOLDING, LLC.,

Defendant/ Third-Party Defendant/  
Counter Claimant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 146] AND  
GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT [ECF NO. 130]

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On November 1, 2019, the plaintiff, Norfolk Southern Railway Company ("Norfolk Southern"), filed this lawsuit against Matriculated Services, LLC ("Matriculated"), alleging that it had failed to pay certain railroad demurrage and other charges [ECF No. 1].<sup>1</sup> Although Matriculated initially defended against Norfolk Southern's allegations, it ultimately abandoned this litigation. By previous Order, the Court found that Norfolk Southern was entitled to entry of default, pursuant to Federal Rule of Civil Procedure 55(a) [ECF No. 121]. The Clerk of the Court entered default against Matriculated on July 15, 2022 [ECF No. 124].

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<sup>1</sup> Norfolk Southern later amended its complaint to add Adrian Holding, LLC as a defendant [ECF No. 60]. Norfolk Southern dismissed its claims against Adrian with prejudice on December 16, 2022 [ECF No. 129].

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DISMISSING ACTION WITHOUT PREJUDICE**

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On January 11, 2023, Norfolk Southern filed the pending motion seeking entry of default judgment against Matriculated, pursuant to Federal Rule of Civil Procedure 55(b) [ECF No. 135]. The Court referred this motion to United States Magistrate Judge Michael J. Aloï [ECF No. 136]. After conducting an evidentiary hearing on January 30, 2023 [ECF Nos. 144, 145], the magistrate judge entered a Report and Recommendation ("R&R") recommending that the Court grant Norfolk Southern's motion for default judgment [ECF No. 146]. Specifically, he found that Norfolk Southern had substantiated its claim for a sum certain and that it was entitled to entry of default judgment against Matriculated in the amount of \$215,321.00, plus post-judgment interest. Id. at 5-6.

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." Id. at 7. It further warned them that the "[f]ailure to timely file objections . . . will result in a waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation." Id. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review

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de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, it has reviewed the R&R for clear error. Finding none, the Court **ADOPTS** the R&R in its entirety [ECF No. 146] and **GRANTS** Norfolk Southern's motion for default judgment [ECF No. 130]. It further directs the Clerk to enter an order of default judgment for a sum certain in favor of Norfolk Southern and against Matriculated in the amount of \$215,321 in damages, plus post-judgment interest pursuant to 28 U.S.C. § 1961.

It is so **ORDERED**.

The Clerk is directed shall transmit copies of this Order to counsel of record via email and Matriculated, via certified mail, return receipt requested, at its last known address.

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**DATED:** March 22, 2023

Handwritten signature of Thomas S. Klee in black ink.

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THOMAS S. KLEE, CHIEF JUDGE  
NORTHERN DISTRICT OF WEST VIRGINIA